

APPLICANTS:
William D. Simpson, Jr. and
Christina Pappas

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

REQUEST: A variance to permit a retaining wall located within a recorded easement in the R2 District

HEARING DATE: December 5, 2007

Case No. 5625

ZONING HEARING EXAMINER'S DECISION

APPLICANT: William D. Simpson, Jr.

CO-APPLICANT: Christina Pappas

LOCATION: 445 Fox Catcher Road – Hunters Run subdivision, Bel Air
Tax Map: 56 / Grid: 2E / Parcel: 581 / Lot: 59
First (1st) Election District

ZONING: R2 / Urban Residential

REQUEST: A variance, pursuant to Section 267-26C(6), of the Harford County Code , to permit a retaining wall to be located within a recorded utility easement in the R2 District.

TESTIMONY AND EVIDENCE OF RECORD:

William D. Simpson, Jr., Co-Applicant, described the subject property as an approximately two-tenths of an acre parcel improved by a single family, two story home with an attached two-car garage. A deck is located to the rear of the house. The Applicants purchased the property in 1999 and reside there with their daughter.

In an attempt to correct what the Applicants perceived to be a severe water drainage problem in their rear yard, caused by extreme slopes, the Applicants constructed a retaining wall across a portion of their yard in mid 2007. Photographs in the file, described by Mr. Simpson, show an attractive block wall of a graduated height, from what appears to be approximately 8 inches in height to almost 5 feet in height, and roughly 70 feet long.

The Applicants, who did not apply for a permit, stated that they did not realize the construction of a retaining wall in this location is prohibited by the existence of a County Utility Easement. However, they indicated that the retaining wall itself has acted to not only eliminate the severe water problem which they previously experienced, but also provides them with additional usable space in their back yard. Seeking approval for their mistake, the Applicants have requested this variance.

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The Applicants have obtained letters from adjoining neighbors indicating the neighbors' lack of opposition. Construction of the retaining wall has been approved by the Applicants' Homeowners Association.

For the Harford County Department of Planning and Zoning appeared and testified Anthony McClune. Mr. McClune indicated that the property had a severe slope prior to the construction of the retaining wall. Storm water drainage was funneled, because of the slope, toward the Applicants' house. While the retaining wall has been built in a County dedicated utility easement, the Harford County Department of Public Works indicates that no use is made of the utility easement, and the Department of Public Works has no objection to the granting of the variance.

In Mr. McClune's opinion, the retaining wall will have no adverse impact and the Department has accordingly recommended granting of the variance.

No testimony or evidence was given in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

"Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

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- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

Harford County Code Section 267-26C(6) states:

“No accessory use or structure, except fences, shall be located within any recorded easement area.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants live in an attractive, single family home in the Saddle Ridge community outside of Bel Air. According to the Applicants, and as verified by the Department of Planning and Zoning, their lot, which is a total of about two-tenths of an acre, was encumbered by a severe slope to the rear of the house to such an extent that the back yard was virtually unuseable.

Earlier last year the Applicant decided to construct a retaining wall across a portion of the rear of the property. The purpose of the retaining wall was to create a level, useable space in the Applicants’ back yard, and to also eliminate what the Applicants believe was a very substantial drainage problem.

The Applicants undertook this work themselves and, as result, created what can be only described as a very attractive block retaining wall, as is amply witnessed by photographs in the file.

The neighbors all agree, by letters submitted to the file, that the retaining wall is a benefit to the neighborhood and no objections have been expressed. The Applicants’ Homeowners Association has expressed no problem with the construction of the retaining wall.

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Unfortunately for the Applicants, the retaining wall is constructed within a utility easement. Such a structure is not allowed in a utility easement, normally, as the Department of Public Works on occasion must access drainage lines and utility lines within those easements.

However, the Department of Public Works has indicated by letter to the file that no utilities have been installed within this easement and the Department of Public Works has no objection to the granting of the variance. This is quite fortunate for the Applicants, as otherwise they would have been forced to remove the retaining wall.

Accordingly, it is found that the Applicants suffer a hardship from an unusual topographical condition which is best remedied by the construction of a retaining wall. The retaining wall as actually constructed by the Applicants is the minimum relief necessary to alleviate the hardship and is, in fact, an very attractive improvement to their property.

No adverse impact is found to result to the neighbors or neighborhood.

CONCLUSION:

Accordingly, it is recommended that the variance to construct a retaining wall in the utility easement is granted, subject to the Applicants obtaining all necessary permits and inspections.

Date: January 9, 2008

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 7, 2008.